

# A National Direct Primary for the Presidency

by Arthur L. Crookham

*1912*

Submitted to the Department of History  
and Political Science of the University  
of Kansas in partial fulfillment of the  
requirements for the Degree of Master of Arts

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FOR THE PRESIDENCY

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"Under every form of government, nothing is of so great importance as the regulation of the succession to the chief magistracy. In kingdoms and empires, the stability of government and the preservation of order depend in a great degree upon a faithful adherence to the established rules of succession, and in republics upon the knowledge that the Executive of the nation has been chosen by a fair and satisfactory method, and that he is the choice of the great body of the people."--O'Neil.

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Call our present government, manned by nominees of the convention, "government by the caucus and convention. It is not representative government. It is not government by the people."--La Follette.

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"The basis of our political systems is the right of the people to make and alter their constitutions of Government."--Washington.



## P R E F A T O R Y   N O T E

This thesis was undertaken in an individual seminar in 1912-13 under the direction of Professor Clarence A. Dykstra. It was preceded by a study of the organization of political parties and the workings of party government in the United States. No attempt has been made in the bibliography to append all the sources read, or all authorities previously read or studied, which have given a basis for the whole paper. An examination of all the state primary laws enacted to the present has been conducted, but little was found that was of value, since the bills already introduced in Congress sum up all the points already established as essential in direct primary legislation; and further, since the problems that arise in extending the direct primary to the national field are mainly concerned with application and not with the substance of the principles of the primary, themselves. While the writer does not profess to claim credit for the originality of subject, he has not seen any plan, method or proposition professing to do what he has undertaken in this paper.

Arthur L. Crookham

Lawrence, Kansas.

May 28, 1913.

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PART ONE

Introductory



Wherever popular government has existed and wherever elections have been the means by which public officials have been chosen, the necessity for some mode of selecting the candidates previous to the election has been experienced and recognized. The various steps in the development of the machinery of nomination form a commentary on the degree of democracy attained at the time of their adoption and establishment. The evolution of the nominating machinery is no less a part of the democratic movement than are popular elections themselves. The past twenty-five years have seen a multitude of safeguards thrown about the regular elections. Elections, only quasi-legal previously, have been removed from the sphere of party influence and control. The introduction of the Australian ballot, and the enactment of corrupt practises laws and other admirable pieces of election legislation (such as publication of campaign expenses and a limit thereon) have removed much of the reproach that formerly attended elections in the United States. But surely no one expected that the total disappearance of the corruptionist and ringster would result. It certainly cannot be a matter of surprise that, being thus deprived of a wide field of operation, he should turn his attention to the only other sphere of activity left to him. In the caucus, primary or convention, unregulated by law, he has realized his opportunities to the fullest degree. "Let me control

the nomination and I care not who votes in the election:" he has said. Through bitter experience, the electorate has discovered that popular control of nominations is no less important than popular control of elections.

In the development of a nominating system, by which the electorate's choice may be independently determined and accurately expressed, the democracy of today has a real problem for solution. That the question is one capable of being solved successfully has been established by many of the commonwealths of the Union, although no one is foolhardy enough to assert that all contingencies have been provided for and all crudities eliminated; perplexities are yet sure to arise to call out the best thought of legislators and students of politics and government. The commonwealths, then, are taking the lead; direct nominations are having their inning in commonwealth legislation. Given five years, and the matter will probably be a "dead issue" in nearly every one of the United States. In many states, Senators and Representatives, federal officials, are being chosen at every election through some sort of direct nominating primary.

In the choice of the party nominees for the presidency and vice presidency no advance has been made. Indirect nomination has broken down in the selection of the chief magistrate of the nation no less than in choosing the commonwealth governor. Failure

to control the primary selection is failure to control the ultimate election, whether the election be municipal, state or national in extent. Direct nomination of the presidential candidates is a living issue of the day. The object of this paper is to attempt a discussion of this question and to determine, if possible, how the direct primary can be extended to include the national officers.



PART TWO

The History of Presidential  
Nominating Machinery

The adoption of the national Constitution meant ultimately that some institution would have to provide some scheme of nomination for the president and vice president, although the founders themselves were completely oblivious to this fact; for they considered that they had provided for election, and nomination as well, in their cherished electoral college. It is obvious that, whatever this scheme of nomination was to be, its basis was to be found only outside the Constitution, for that charter had carefully refrained from mentioning party or party machinery; and it was, in fact, the hope of its authors that "factions" would not arise to threaten the stability of the infant republic or to cause dissensions between its citizens. But however much the fathers of the document may have been opposed to parties and party strife, many of them were themselves early forced to take a hand in the political game. Washington, chief adviser against "faction," although he took the presidential chair on the announcement of a unanimous electoral vote, saw his cabinet fall apart because of a new political alignment and left the office with the country divided, politically, into the two main bodies that roughly hold today.

The need for a national nominating system was not felt in 1788, nor in 1792, for Washington was the choice of the country. The election of 1796

was passed without recourse to any formal caucus, since the general understanding put Jefferson and Adams forward as their party chiefs. Both parties held caucuses in 1800, attended by the Senators and Representatives of their respective parties. The origin of the Congressional Caucus, as these meetings became designated, is not hard to discover. Whenever it had seemed likely that a party measure in either house of Congress would fail to carry, or an election be lost, because of dissention in the ranks of the party's members, it had become the custom for the members to come together in a secret meeting, discuss the matter in controversy, decide on some line of action, often through compromise if the defection was strong enough to threaten disaster, and then to bind all who stayed through the caucus to its decision. When there is remembered the added fact that Congress was conveniently in session previous to the presidential election (an item of no small importance in the days when travel was slow, costly and arduous) and further that most of the party leaders were members of Congress and accustomed to have their opinions adopted as law by the relatively small proportion of enfranchised citizens, it can be readily understood why the system took immediate hold.

Four years later in the election of 1804, the Congressional Caucus was permanently established and



it continued with diminishing popularity to its final employment in 1824. From the very beginning its critics were numerous and bitter in their denunciation of its arrogant usurpation of the power of nomination. In 1812 the "Peace Republicans" declared it "hostile to the spirit of the federal Constitution, dangerous to the rights of the people and to the freedom of election." Various members of Congress and many newspapers denounced the system.

The death of "King Caucus" came in 1824. With only one great party, the Democratic and that split into many almost irreconcilable factions, the whole fight was to lie in securing the nomination. Adams, Calhoun, Clay and Jackson were not disposed to submit to the Congressional Caucus, for the nomination was sure to go to Crawford, who had a strong "machine" in Congress; and through newspaper agitation, mass meetings of citizens and other modes of publicity, they informed the electorate of the dangers that threatened free republican institutions. So successful were they, that Crawford was overwhelmingly defeated at the polls, where the people set their disapproval on Congressional dictation. The system had broken down, when after nominating a series of able men, it attempted to dictate to the people, who had been accustomed for years to make nominations, directly or indirectly, through delegate conventions for

local, state and Congressional offices.

The revolt against the Congressional Caucus had broken out in 1824, and the first national convention was held in 1831. During the period of transition several methods were resorted to in different sections of the country. Most popular was a state legislative caucus in which the party members of both houses sat; it was frequently modified in personnel but not in procedure by the seating of delegates from districts represented by the opposition in the legislature. Others were a resolution of nomination passed as a regular act of the state legislature; a state convention of elected delegates; and finally a public meeting or mass convention in the nature of a present day political rally. But not one of these methods could provide the party unity necessary to insure success to a national nomination. Part of them lay under the general disapproval that attended any sort of legislative caucus; the remainder were too local.

The idea of a national convention, similar in its method of representation and procedure to the state convention, readily presented itself. To the Anti-Masonic party must be given the credit for the first national convention. The call was issued in 1830, and one year later on Sept. 26, 1831 the convention assembled at Baltimore. Pursuant to a call

issued by a caucus of National-Republican members of the Maryland legislature a national convention of that party also met in Baltimore, in December of 1831. All of the states were asked to participate by sending delegates "equal in number to the electors of the president to which their states are respectively entitled."

Says Dallinger:

An investigation of the proceedings<sup>1</sup> shows that there has been very little change in procedure from that day to this, the reason being that, in 1832, the convention system was already highly developed in many of the states and consequently there was little room for change. We find that there was a temporary organization; an examination of the credentials of the delegates; the appointment of a committee on permanent organization, which subsequently brought in a list of permanent officers; nominating speeches; the appointment of a committee to prepare an address to the people, corresponding to our committee on resolutions; and finally a committee to notify the successful candidates of the nomination.<sup>2</sup>

A resolution prevailed that "central State Corresponding Committees" be provided in each state; and these committees were to attend to the organization of similar central committees in each county and town. At a follow-up national convention of the young men of this party, the procedure of the regular convention was re-echoed and a series of resolutions, designated as a platform, was issued for the first time. Following the lead of the Whigs, the Democrats met in a rep-

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<sup>1</sup> Niles Register, 41: 301-7.

<sup>2</sup> Dallinger, Nominations for Elective Office in the United States. P. 37.

representative convention on May 21, 1832, where the "Unit rule" and "Two-thirds rule" were adopted. In 1836 the Whigs held no convention, but since 1840, there has been no break in the continuity of national conventions of parties pretending to have a national following. Furthermore, a national convention has been used several times to launch a new political party.<sup>1</sup>

With practically no change in its procedure, the national convention stands today, over three-quarters of a century old, substantially the same institution that it was at its first employment in 1831.

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<sup>1</sup> Notably in the case of the Republican party in 1856-60 and the Progressive party in 1912.

PART THREE

The Convention In Theory---

Its Merits

The history of our national nominating machinery has been traced from its inception, and we have seen the oligarchic Congressional Caucus, which broke down after an unsuccessful attempt to dictate to the electorate, replaced by a system, hailed as democratic and praised as truly representative. The party dictator was eliminated, it was declared; the day of the individual party member was at hand; the great monopoly was dissolved beyond repair, and every voter was a co-equal stock-holder in the party of his choice.

The convention system is before the court of public opinion today; its merits and past services are being considered; its value for the future is being carefully determined on the basis of the service it can render; its retention will rest only on a favorable verdict. It is pertinent to examine the convention system to ascertain how it works under ideal or favorable conditions.

"Theoretically the convention is perfect. It passes the highest test of a political institution in a democratic community. It admits of the purest application of the principle of representation or delegated authority."<sup>1</sup> According to the theory, the electorate of a party meets in small assemblies based on a territorial unit and, after nominating the local officers, elects delegates to a higher convention or

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<sup>1</sup> Meyer, Nominating Systems, p. 49.



caucus, usually under certain instructions. These delegates and those from the other similar territorial units meet in a district convention and repeat the performance, electing and instructing other delegates in turn; and this process continues until the climax is reached, when the delegates from the commonwealths meet in a national convention to select the heads of the national ticket. It is a simple matter to trace the expressed will of each single voter through the various inferior conventions to the national convention. Step by step, the individual's choice is transmitted through delegates into every council where the party chiefs are to be named; each party member has an equal participation in the selection of all candidates with every other party member. The theory is perfect; the system is democratic. The reason for its existence is found in the fact that it is impossible for all the party voters to meet in a state or a national convention; hence, just as the founders of the national government devised a scheme of representative democracy instead of a pure democracy, so did the founders of the convention system choose a delegate, representative system.

Parties and party politics are essentials in a democracy, for they supply the link between the citizens and the governmental machinery. Our country is governed by the parties; each presents its issues and

appeals for votes on its past record or its promises, based on criticisms of the party in power; each finds its only chance for success through organization. The convention has become the rallying point of the party. "When so conducted as to command the confidence and respect of the party, it was the foundation of party success."<sup>1</sup>

In the conventions the party chiefs move about, encouraging and exhorting. Reports of the party strength are made by those directly from the sections reported on; defections are noted and provided for and additions welcomed with cheers. The lagging spirits of the pessimistic are revived, and the delegates are sent home to predict success to the wavering. The strength of the enemy is skillfully forecasted and clever manipulations evolved to curtail it. All differences are wiped out through conference and compromise; old scars are hidden under the mask of party solidarity. New and suitable timber among the younger members is gradually seasoned into party leadership.

When a ticket is to be issued for a wide area it must represent, or at least placate, all sections; an Easterner or a Westerner, or a Southerner or a Northerner have been found happy combinations. Geographical boundaries and sectional interests must be

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<sup>1</sup>Meyer, op. cit., p.49.



carefully considered; a candidacy from a manufacturing district must be supplemented by one from an agricultural section; a conservative must be balanced by a progressive. A convention is peculiarly fitted to make such selections and combinations.

Second only to the importance of choosing the candidates is the writing of the platform; and here every step must be carefully watched; a single misstep and all may be lost. The platform is written by the ablest and shrewdest party chiefs, the inner circle of three or six or ten. It is subjected to the careful scrutiny of the minor lieutenants and finally delivered to the convention. It will comprise the answer that the party has to make to the party members in their demands along party and national issues. It will present a broad, comprehensive program in reply to the economic, social and political demands of the times.

Undoubtedly, "the convention in theory lies at the foundation of party success." It unifies the party; coordinates its movements; fills the party members with enthusiasm; chooses the candidates; formulates the platform; and provides the rallying point for a positive manifestation of party strength.

The convention, it is certain, has great possibilities for good; its merits are manifest from this brief resume. But, unfortunately, the convention here described exists only too often in theory.

That the convention is a pure democratic institution today is a Utopian delusion. The convention as it is and the present status of the system forms the subject matter of the succeeding section.

PART FOUR

The National Convention  
In Practice

No other single political institution in the United States during the past twenty-five years has been subjected to as much criticism as has the party convention. The system of delegate representation in the selection of party candidates has been excoriated in newspaper column, in political address and in the political discussion of the common citizen. Nor has the movement spent itself in idle words, unheeded by legislator or statesman. Leaders have everywhere appeared to head a unified public opinion in forcing a change, and their success is to be found written on the statute books of a majority of the commonwealths today. To 1900, the laws dealt with the regulation of delegates to the party conventions and, being incomplete and unsatisfactory, they merely paved the way. In 1901 the high water mark of the direct primary movement came; in that year a flood of carefully drawn bills occupied the attention of nearly half of the states. Since that time the demand on the part of the electorate for direct participation in choosing the party standard bearers has not abated, and today in nearly two-thirds<sup>1</sup> of the states every member of the party has an equal opportunity to enter the direct primary lists for an office, and to express his opinion on the fitness of

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<sup>1</sup>Equity Quarterly, Vol. XV-No. 1, Jan., 1913. p. 54.

the candidates.

Surely, here is basis for a confident statement that there is something wrong with the convention system. A political institution that has been employed for a hundred years is not given up through mere whim and caprice. Criticism that is anything but local, finding expression through legal enactments in every portion of the nation, means more than petty dissatisfaction. A system, pretending to comprise as its fundamental characteristic the purest expression of democracy, will certainly not be thus tossed aside in the most democratic period of our national existence without reason. The natural and inevitable conclusion must be that there is fault with the system itself; that, perhaps, the convention does not possess all the merits and democratic qualities so generously ascribed to it by its founders.

It is true that the conventions, which have been most violently assailed with constructive criticism, are those of the county and state, and the reasons are not far to seek. First, the periodicity of their meetings, which occur biennially, contributes to a continuous discussion and constant reminder of their failures; and second, they are usually bossed, managed and attended by second-rate, "one-horse politicians" who are not clever enough to conceal their tracks, and who by their fruits are usual-

ly known to a large part of the citizens of the county or the state. Criticism of the national convention is of recent origin. It is true that, from the beginning, there have been dark stories afloat of doings at the conclaves of the parties, and the common citizen has rested uneasily under the conviction that not all was well, but he has been too much disposed to make excuses, to stultify his conscience with the argument that one cannot be too particular in politics and to nerve himself for the campaign with the reassuring reflection that probably the opposition has done worse. Again, the national conventions have met but once in four years and the public forgets easily. The masters of national conventions are experts, never bungling their work and always covering up traces which a less skillful manager would leave and through which he might be detected. And, finally, the convention is master of its movements, being safe in its procedure because of the utter impossibility of any unified movement against it, and being certain that he who is disposed to criticize and hold aloof will hastily return to the organization when party regularity affixes to him the stigma of "bolter."

The convention system has broken down. Whether the convention be for the purpose of selecting the sheriff, the governor or the president, we hear the charge made and reiterated that the common citizen has no voice in its councils; the faith of the people

in the convention as an instrumentality of democracy has departed, and no amount of endeavor to rehabilitate the system with the faded garments of departed glory or the empty argument of service in the past will serve to blind the electorate to the true condition of the tottering institution.

The merits of the convention system, with special emphasis laid on the national institution, were fully detailed in the preceding section; but these unfortunately are not found in the workings of the convention in the actual world of politics and party strife. If every party member were to attend the local caucus of his party; if it were there possible to choose the best men for local offices and to elect and instruct fully delegates to a higher convention, meanwhile keeping out the omnipresent "slate;" if it were possible for these delegates to transmit this sacred trust of power and responsibility through successive stages to the national convention; if this delegated authority were there used as the theory presupposes,--then indeed would the delegate representative system be beyond reproach. "The theory is perfect." But here, the whole matter falls flatly to the ground, no less than does the futile wish expressed in the childish jingle, "If 'ifs' and 'ands' were pots and pans." "Where the 'machine' controls



politics the voter has ceased to speak in the convention. His voice is lost in the course of its transmission. The delegates are not representative of a body of citizens but of a narrow ring of politicians. The convention is not the mouthpiece of the people, but of the 'machine'."1 The fine theory, spun out to an unwarrantable length, snaps under the strain.

The defects of the national convention system, and of the scheme of indirect nomination in general, are either organic or functional. The term organic will be used to designate the faults the origin of which dates from the founding of the institution itself, the roots of which lie buried deep in the foundations of the system and the existence of which is so interwoven with that of the convention that no hope can be entertained of freeing it from them. By functional faults are to be understood those which have developed during the lifetime of the system; they are external and, while serious, do not necessarily incapacitate the convention from being employed further.

The organic faults of the national convention are irremediable; and they are serious enough to preclude its continued use as an agency of democratic government. The usefulness of the convention system

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<sup>1</sup> Meyer, op. cit. p. 55.



has been destroyed because of the steady undermining that has taken place. No amount of pruning or lopping can free the institution of these inherent imperfections.

When King Caucus was displaced by our present machinery, the founders of the new scheme of national nominations declared its fundamental characteristic was its representative nature, and so it is in theory as we have seen. Today its most vulnerable point, and the one most violently assailed by its critics, lies in its non-representative nature. The theory presupposes that every party member, or a majority of them, will attend the elementary caucus. Each individual, in fact, must possess untrammelled freedom to enter the primary and must actually attend, if the institution is to have any just pretensions for labeling itself democratic. But what are the facts?

Partly through the indifference of the voters, it must be confessed, and partly through the machinations of the ever-present band of veteran officeholders and politicians, the voters long since began to stay away from the caucus. Of course, there is no real reason why the voters should not have taken an interest in the nominations. It was of vital importance that they should do so. But the system is complex; it is a long period from the election of a half dozen men in the early spring in a dirty, upstairs, back alley room, frequently at an inconven-

ient hour, to the pageantry and importance of the national party conclave in June. The voter is unable to see the connection and relation between the two. They are disassociated phenomena to him. He is surprised beyond measure to be informed that the proceedings of the "Chicago convention" or the "Baltimore convention" rests on the action taken in the poorly lighted and ventilated room over the corner grocery store. He will sit up half the night to hear "who has got the nomination" but he never for an instant considered attending the caucus, even if through chance or accident he knew such a meeting had been called.

To such a condition, the local "wheel-horses" have contributed much. Intoxicated by the sense of authority and power which the situation yields, they have been well content to take over the management of the caucus; they have extended but a grudging welcome to the citizens who have ventured in; and as these have seen that they were not wanted, they have given up with indifference and without a sense of the importance of such a surrender. As a consequence, more and more authority and influence has come to be wielded by these local party managers, until a half dozen or more may have usurped the functions of a thousand voters. So keen has the competition for delegates at the superior conventions become, that it is made well worth the while for the local politic-

ians to present men who will listen and vote as directed.

This fault lies at the very basis of the convention system. It is a part of its very texture and substance. Any system which interposes as many steps, stages and gradations of delegated authority in the way of a definite expression of the desire of the electorate as does the present nominating machinery is bound to work as unsatisfactorily. It is not necessary to prove or even to consider at this time the existence of similar machine combinations in each successive stage; for if the voters do not participate in the elementary caucus, no matter how perfectly the following conventions may be administered, the much-boasted representative character has been eliminated beyond recall; and what happens after that stage can be of no more than passing interest to the voter. He may voluntarily consent to be bound by its actions, but in reality he has no more a part in its councils, and no more voice in its decisions, than if he were of the opposite party.

The theory of instruction itself, either for men or measures, is the most farcical of all the claims advanced by its defenders. The delegates are supposed to be elected and sent to the next highest convention, instructed for certain candidates and certain platform planks. Certainly, democracy has scored

again. But what happens in practise again differs from the theory. No such transmission of instructions is possible; obligations are easy to shift and little heed is paid to them; the evil is done when the account of it is published and no remedy exists.

Why have twenty-nine of our commonwealths abandoned the convention for the nomination to offices within the state, after nearly a century of use? Why have twelve of our states a direct primary controlled by law for the selection of delegates to national conventions, and three others<sup>1</sup> made provision for a direct party vote within the state? Why else than for that most fundamental of all reasons that the convention system has ceased to be an instrument of democracy; that all attempts at reform of it or through it have failed; that its very existence has perverted free republican institutions; and that it has become an instrument whereby a small ring can control the votes of a state and deliver them tied and labeled to a state or a national convention, while the voters look on in impotence. The convention is no longer a democratic agency. No other institution has ever been presented with so many al-

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<sup>1</sup> Fla., Ariz., and La.; but since there is no legal organization of the Republican party in La., and only impotent organizations in Fla. and Ariz., held together through federal patronage, for all practical purposes these primaries for national delegates are statewide also.

luring recommendations; no other has so fallen from its pedestal; no other has contained so much possibility for good and been so productive of evil; no other has proved so threatening to the perpetuity of our frame of government. Here is reason enough for an immediate abandonment of the convention, and the installation of a system that is as democratic as elections themselves. Every theory of the convention, in its turn, has broken down when the test of practicability has been put to it.

But serious as the defects of the convention are, even when men of ordinary honesty and some pretensions to respectability administer it, when it is managed by the ringster and boss the condition is aggravated a thousand-fold. Black pages are found aplenty in the history of our elections;<sup>1</sup> but the blackest crimes in the political category are connected with nominations. From local caucus to national convention there is one succession of criminal acts. Every convention, filled with opportunity for the corruptionist and brigand of politics, bears not only its own burden but groans under the weight of iniquities to which it succeeds from its predecessor. The writings of every authority on the convention and those of every publicist teem with illustrations of the manner in which the electorate, or such part of it for whose sentiments the ward boss will not

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<sup>1</sup> Cf. the sale of votes by citizens in Adams County, O.

vouch, is deprived of participation in the primary. "Snap conventions," "Pudding ballots," coercion, corruption, frauds, intimidation, false registration of those not entitled to vote, rejection of those eligible and a thousand other subterfuges are employed by the ringsters in efforts, generally successful, to control the nominations for local office and the selection of the delegates. So flagrant are the abuses and so outraged have the decent members of the electorate become by the procedure of the caucus managers, that they have withdrawn from the unequal contest. Name over some of the state and national bosses--Taggart, Murphy, Quay and Hanna, whose activities have imperilled the safety and integrity of the nation to a far greater degree than did the treasonable machinations of a Burr or an Arnold. Inquire where the source of their power lies and it will be discovered that the convention is their stronghold. To lose the the caucus and power of making the nominations is to lose the election and the office; and the machine has done neither. Extra-legal in constitution, complex in nature, unresponsive in action and undemocratic in results, the convention has readily lent itself to the devious and sinister manipulations of the bosses. The machinery of the caucus has run, or stopped or slowed down at the nod of the man who has made politics his business and offices his stock in trade, until the



caucus has become the actual, visible form of that intangible thing, the "machine."

The culmination of the plottings, the corruption and jobbery is found in the national convention. The stakes are high; the prize is most likely to go to the faction which ventures the most. Here are to be found the master minds of intrigue, engaged in the disposition of the office of president, the so-called "highest gift in the hands of the people."

The true story of the "deals" and "frame-ups" at a national convention have never been told and likely never will; they are known only to those who are immediately concerned in them, and the fabled oyster is loquacity itself in comparison with the perpetrators. Naturally, a thief does not bulletin his crimes. But parts of the story are frequently told. At the time of the conventions, the papers are filled with accounts of "trades" and "combinations": Delegate X has been promised such an office, while Delegate Y is openly charged with having accepted a "large roll of bills." All such charges are, of course, to be scaled down from the extravagant printed accounts, but each contains its grains of truth; and every recognized authority on the convention is forced to admit that there is only too abundant evidence of corruption.

Experience has shown that in conventions at

which candidates for the most important public office are chosen there have been a sufficient number of weak or corrupt delegates who could be bought with gold to enable the political cabal to control nominations. Indeed, it may be said that the more important the convention, the greater inducement to buy delegates and the greater the certainty of their being bought. . . . Personal considerations, ranging from the highest to the lowest, will sometimes intervene between the wishes of the voters and the choice of the candidates. . . . The pressure that is brought to bear upon delegates through personal influences, political prestige, use of money, threat and cunning duplicity is tremendous and well-nigh irresistible. . . . Again and again we find disgraceful instances of delegates who in the hour of temptation fail in strength and sacrifice their honor as well as the sacred trust confided in them by their constituents, for money, office or political advantage. . . . It is perhaps not too much to say that the average delegate hopes to have his personal fortunes affected by the selection of this or that man. He endeavors to work his way in the convention in that direction in which he can at the same time best work his constituents for further support. . . . The position of the delegate is purely honorary and requires much time. Men of business frequently refuse to accept it for this reason. Hence, the men who serve usually are in politics for purely selfish reasons. Not that they always and necessarily entertain ideas of corruption but that they work for a political future, or hope to earn public reward from their constituents. Hence, the delegates who do not fall a prey to the "machine", are strongly tempted to become the victims of their own selfish aspirations.<sup>1</sup>

Surely, if ever there was a system devised in the interests of the venal, the saleable and the political brigand, it is the convention system. The whole existing machinery of nominations encourages graft and develops grafters. Away from the sight of their constituents, surrounded by a company who know exactly what is wanted, with innumerable alluring of-

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<sup>1</sup> Meyer, op. cit. pp. 60-1.



fices held before their view, the honest delegates weaken and sell out in many instances. But the fault is the fault of the system. The wonder of it all is that human nature is strong enough to resist to any degree the pressure that may be brought to bear on the delegate through offers of cash, favors, office, preferments or promotion in the party.<sup>1</sup> And in only too many instances the delegate is venal to start with, being but a part of the regular "machine", whose election has been secured at the elementary caucus, or, if the deal were too flagrant to be perpetrated there, at some later stage, where there is less danger of interference from the voters.

The third of the organic faults is found in the promulgation of the platform. A citizen of only ordinary intelligence knows that a "platform is made to get in office on." "Party platforms are adroitly drawn for the purpose of catching votes rather than for the purpose of development or improvement of government and the conditions of humanity."<sup>2</sup> "A platform is invariably prepared by a small committee and usually adopted by the general committee, and by the convention, with little change. The tendency is

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<sup>1</sup> Federal patronage and the spoils system and their relation to the national convention will be treated later under functional faults.

<sup>2</sup> Bourne, Federal Patronage, speech in Senate of U.S. on Feb. 27, 1911.

neither to define nor to convince, but rather to attract and confuse. It is a mixture of denunciation, declamation and conciliation. . . .Seldom in recent years have either platforms or the processes that produce them had a powerful influence on the maturing or clarification of public opinion."<sup>1</sup> The platform deals in platitudes, in extravagances, in profuse and meaningless declarations, in glittering generalities, in vacuous promises to do or refrain from doing; and is skillfully drawn to throw a covering of "prudent ambiguity" over living, pulsating issues on which it is desirous to seem to take a stand without actually becoming involved. The resistance exhibited by a national party platform in the United States against incorporating any popular measure or urgent reform may well excite speculation of a profitable nature. Why is a platform? What practical purpose does it serve aside from catching votes? If there is real popular control of the national convention, if delegates are sent to it by the people, under inviolable instructions for or against certain public measures and issues, why is it that their protests and recommendations do not find expression in the platform? These are questions which the defenders of the present system must answer.

A platform, even of this nature, might be

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<sup>1</sup> Bryce, American Commonwealth, II:334.

of some utility if it were to be administered honestly. But the successful candidate had little part in framing the platform on which he was elected; and too many times he has little inclination to exert himself in the matter. The platform and the candidate should supplement each other. But little is to be expected when a "conservative" is elected on a fairly progressive platform,<sup>1</sup> and a "progressive" is at a loss when a platform filled with "jokers" is handed him to administer.

Established as a "reasoning body where party policies might be carefully weighed and party issues thoroughly defined, and the platform drawn from the best sources of calm thought,"<sup>2</sup> the convention is often the scene of the wildest demonstration, where party issues are "cooked and dried beforehand by a few self-constituted leaders and yelled into a platform in frenzied excitement. . . Sober, sturdy thought cannot exist on such occasions, where emotion, instead of reason, prevails."<sup>3</sup>

The convention fails miserably in selecting the best vice presidential candidate. Twenty-six men have filled the office of president of the United States; two of these men died in office and three were

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<sup>1</sup> Cf. Taft and the 1908 Republican platform, especially the tariff platform.

<sup>2-3</sup> Meyer, op. cit. pp. 62-3.

assassinated; hence in five cases the vice presidents have assumed the presidency. The succession, says Bagehot, is a happening "by which a man elected to a sinecure is fixed in what is for the moment the most important administrative post in the political world. . . .The framers of the constitution expected that the vice president would be selected by the electoral college as the second wisest man in the country."<sup>1</sup> But, as soon as the Congressional Caucus, and later the national convention, arose, the vice presidential nominations began to be based purely on despicable compromises. An examination will show that most of our vice presidents and most of the vice presidential candidates on defeated tickets have been colorless non-entities. "The vice presidency being a sinecure, a second-rate man agreeable to the wire-pullers is always smuggled in. The chance of his succession to the presidency is too distant to be thought of."<sup>2</sup>

The failure of the convention system to choose as prominent and capable men as can be secured for the vice presidency is an item scarcely ever thought of; but the importance of this piece of criminal carelessness can scarcely be over-emphasized. The country consumes a vast deal of good breath talking over the merits of the presidential nominees, but

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<sup>1</sup> Bagehot, The English Constitution. p. 99.

<sup>2</sup> Ibid. note.

scarcely heeds their "running mates," men who likely were never heard of till the time of the convention. and yet irreparable harm may come to the republic through this breach of what we are pleased to term "American common sense." In the first of these five cases the party was almost disrupted<sup>1</sup> and government business stopped while the president and Congress wrangled. Fillmore, who succeeded Taylor, was colorless. The instance most threatening to the stability of the nation came in the succession of Johnson after Lincoln's tragic death in 1865; and still no heed was taken. Arthur, who succeeded Garfield, was an agreeable surprise to the country.<sup>2</sup> In only one of these cases, the latest, was the vice president of presidential caliber and capable of securing a re-election, and this particular vice presidential nomination was forced by that element in the party which hoped thus to shelve a promising popular candidate.<sup>3</sup>

The vice presidency is a sop used in the interests of party harmony to appease a disgruntled faction or section, or to balance the ticket, so that Easterners and Westerners, Northerners and Southerners, free-traders and protectionists, "wets" and "drys,"

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<sup>1</sup> Harrison-Tyler.

<sup>2</sup> His nomination, however, illustrates, the point, for he was named as a spoilsman and as a sop to the N.Y. party bosses; he made a good president, unexpectedly turning against his old friends completely.

<sup>3</sup> Roosevelt in 1904.

farmers and manufacturers, progressives and reactionaries will have something in common on the ticket and may be held in line from a threatened defection. The fault is irremediable under the convention system; "log-rolling and trading" is part of its regular procedure.

Every writer on the procedure of the convention has incorporated in his account a description of the confusion, noise and bluster that prevails. Periods of cheering an hour in length are not uncommon, when some favorite is named. These and similar attempts to "stampede" the convention possess all the spontaneity of the wailing produced by a company of paid Oriental mourners. A hundred men seize the banners of their state; another state falls into line with flags and banners; a band enters the column; soon other delegations join in the procession, and the stage is invaded while the helpless chairman vainly calls for order. If the demonstration becomes riotous, a platoon of police may be ordered in on the mob to hurl the delegates into their seats. Still the friends of the convention system would have the country believe that here is gathered the political acumen and wisdom and patriotism that alone can select leaders and write platforms. Sense is drowned out by senseless racket; hoarse yelling and beating of drums takes the place of clear, calm reasoning. An orator

with magnetic delivery and commonplace utterances may persuade a convention of a thousand delegates to violate their instructions. "Where feelings run riot as they so completely do in our modern conventions, their proper function as rational, deliberative bodies is entirely destroyed."<sup>1</sup>

Certain minor organic faults remain to be considered. Bourne declares that in "every presidential campaign there is a long period of waste or diminution of full efficiency of brains, money and muscle due to the uncertainty as to who the presidential nominees will be, then who will be elected, and last, what the policies of the successful candidate will be after election;" so that "hundreds of millions of dollars" are now wasted through industrial inactivity due to unsettled conditions incident to a change of administration.<sup>2</sup> Meyer says of another of these faults: "Though Congressional and legislative caucuses were wiped out, the poison was still to remain (in the convention) to vitiate American politics from then on. Their prestige, as being composed of members of the highest legislative bodies, gave their decisions a high moral sanction."<sup>3</sup> The notion of party loyalty has grown upon the people; and the matter

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<sup>1</sup> Meyer, op. cit. p. 63.

<sup>2</sup> Bourne, op. cit. p. 7.

<sup>3</sup> Meyer, op. cit. p. 13.



of abiding by the caucuses, constantly kept before the voters' eyes, has dulled the electorate into a blind acceptance of the regular nominations. To bolt is to be followed with curses and imprecations. Critics of the convention lay much stress on the evil practise of naming respectable, well-known citizens as delegates with a full knowledge that they cannot serve so that their places may be filled by proxies, who are named of course to suit the machine.<sup>1</sup> And lastly serious results may arise from the practise of instructing for "second choice" since it presents the opportunity of substituting for the first choice some third party, unknown to fame. This trading and log-rolling is a grave practise when the fact previously stated is recalled that no binding obligation rests on the delegates to follow the instructions and they are free to interpret them as they see fit.

As has been said, the functional faults of the convention are external and do not necessarily vitiate it. But these faults are as serious as are the organic evils, and their presence is as keenly felt. The institution may be freed from them if vigorous remedies are resorted to; but that such will be undertaken seems unlikely.

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<sup>1</sup> Meyer, op. cit. p. 59.



Without question, the most serious functional fault lies in the participation of federal officeholders and "referees of patronage" in the national convention. The Constitution specifically excludes federal officers from the electoral college, but a graver evil results from their appointment as delegates to the conventions. The spirit of the Constitution is flagrantly violated. A self-perpetuating machine is created, one no less offensive than the old Congressional Caucus and only slightly less a usurpation of the rights of the people. In the national convention the spoils system and the twin evil of federal patronage hold their sway. Through their agency, nominations by national conventions have become the "exclusive work of politicians which the electorate of the whole United States is permitted to witness only in gaping expectancy at the polls in the succeeding November."<sup>1</sup>

"The president, through his power of nominating federal appointees, is the head of the greatest political machine the world has ever seen."<sup>2</sup> Whether the president be a shrewd politician himself or entirely ignorant of politics and delegating the power

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<sup>1</sup> Bourne, op. cit. p.7.      <sup>2</sup> Bourne says that, indirectly or directly, there are 384,000 government employees with an annual payroll of \$345,000,000. Op. cit. p.7.

to another, the system is most pernicious."<sup>1</sup> This is manifested either through his attempts to secure a second term or to dictate his successor. Quotations from recent speeches will illustrate these points:

The president has come to be regarded as the head of his party, not as a candidate only but as president. It is a most pernicious doctrine. He has the power of appointment of thousands of federal officers in every part of the country. . . . If he is reelected, the appointees may reasonably expect to retain their offices. . . . He is regarded by his appointees as their political chief, to whom they owe allegiance because he appointed them. . . . He expects every man he appoints to support his political aspirations. To fail is to be treacherous and ungrateful. They so regard it and so does he. . . . Every man holding an office by the appointment of the president has come, by common consent on the part of the politicians, to be one of his political supporters owing him personal allegiance.<sup>2</sup>

Three years ago we had a convincing exhibition of the power of a president to dictate . . . his successor. At that time three-fourths of the Republican voters of my State were in favor of the renomination of Mr. Roosevelt, and believing that their wishes should be observed, I endeavored to secure a delegation from that State favorable to his nomination for a second elective term. But through the tremendous power of the Chief Executive and of the federal machine the delegates selected by our State convention were instructed for Mr. Taft. After the delegates were elected and instructed, a poll was taken by one of the leading newspapers in Portland, which city contains nearly one-third of the entire population of the State. The results indicated that the preference of the people of the State was 11 to 1 in favor of Mr. Roosevelt as against Mr. Taft.<sup>3</sup>

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<sup>1</sup> Bourne, op. cit. p. 11.      <sup>2</sup> Works, The Presidential Term, speech in Senate, Dec. 9-10, 1912. Pp. 6-7. The remedy this paper proposes, together with a far-reaching extension and the exclusive use of the Merit System will go far to eliminate this abuse.

<sup>3</sup> Bourne, op. cit. p. 7.

The whole convention system reeks with trades of the sacred vote of delegated authority for post-masterships, clerkships and even posts of national importance. The nominee accepts the position with a full knowledge of the debts he must discharge. That the delegates confer their votes in expectation of rewards of a pecuniary nature, the following Associated Press dispatch will witness:

DELEGATES WANT JOBS THEY TELL BURLESON

Washington, March 11.- Postmaster General Burleson was confronted with a knotty problem today when former Governor Campbell of Texas, the postmaster general's own state, presented a memorial from the forty Texans who were delegates to the Baltimore convention protesting against the giving of any patronage to twelve congressmen from that state. According to the memorial these twelve congressmen, who were not named, are held by the forty delegates to be reactionary, and therefore not entitled to any plums at the hands of President Wilson or of the postmaster general. The memorial asked that the forty who stood solidly for Wilson at Baltimore be considered when the plum tree is shaken.

Governor Campbell presented this memorial to the president today.<sup>1</sup>

When demands of this nature are complied with, it cannot be maintained that there is any substantial difference between the practise and the sale of the office of emperor in the decadence of Rome.

A second abuse has only lately begun to attract any considerable attention. "National conventions are not representative of the wishes of the

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<sup>1</sup> Topeka Daily Capital, March 12, 1913. P.2.

members of the party who are depended on to cast the votes to elect the ticket."<sup>1</sup> The states are represented in the convention as they are represented in Congress—in proportion to population.

In a Republican national convention a hopelessly Democratic state has the same voting strength as a Republican state of the same population. Georgia casts the same vote in nominating the Republican candidates as Iowa, and Iowa is quite sure to contribute to the election of the party candidate and Georgia is equally sure not to do so. The Republicans of Iowa cast, in 1900, 307,000 votes, while the Republicans of Georgia cast only 35,000 votes. For the party candidate in 1900 the Republicans of Ohio cast 543,000 votes, while the Republicans of South Carolina, Mississippi and Louisiana together cast 23,565 votes. In a national Republican convention, Ohio Republicans cast only 46 votes, while the Republicans from these three Southern states may cast 52. Why should not the voters of the party who are to be relied upon to elect the candidates be allowed to determine the party candidate and party policy?<sup>2</sup>

Why, indeed, other than that to change the present scheme of representation will cause the machine to lose the power these delegates confer? In 1908, 980 delegates attended the National Republican convention; 491, or a majority, were necessary for a nomination. Now

the Southern states and territories, giving no electoral votes, with the exception of Maryland, which gave Taft and Sherman two out of eight, had 338 votes, leaving 153 to be secured to give a majority. Thus, it will be seen that under such circumstances any candidate controlling the delegations from Southern states and territories would have to secure only

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<sup>1</sup> Bourne, op. cit. p.13.

<sup>2</sup> Woodburn, American Political Parties and Party Problems in the United States. Pp.152-62.

153 votes, while any other candidate would have to secure 491 votes from those states which give electoral votes as well as delegates.<sup>1</sup> 43

A similar condition exists in the Democratic convention. Many attempts have been made to reform this non-representative feature but to no avail. Southern Republican delegations continue to be "vest-pocket trading material" for Republican bosses and Democratic delegations from rock-ribbed Republican states in the North remain subject to the will of Democratic bosses.

The dominating power in the convention system is the oligarchical national committee. Mr. Bourne says in this connection:

The Republican national committee consists of 53 members, one from each State, Territory, District and island possession. The Territory of Alaska, with no electoral vote and but two delegates in the convention, has the same representation and power in the national committee as the great State of New York, with 39 electoral votes and 78 delegates. The committee elects its own chairman and perfects its organization. It decides on place and time of convention. It recommends how many delegates shall be admitted from each State and Territory, how the delegates and alternates shall be chosen in the various States, how the delegates from Territories shall be selected, and recommends who shall serve as temporary chairman of the national convention. The chairman of the national committee calls the convention to order and generally directs the campaign.

In the Republican national convention committees on credentials, permanent organization, and resolutions are composed of one delegate from each State and Territory. Each State selects its own representative on these committees and offers them to the convention. The committee of permanent organization recommends the permanent chairman and confirms the other officers who are recommended by the

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<sup>1</sup> Bourne, op. cit. p.13-14.



national committee. Control of the national committee by the administration gives tremendous power, which is made absolute if combined with control of the committee of credentials.<sup>1</sup> If the operators of the machine find that, even with the advantage of control of delegations from the Democratic States and the Territories, they will not have enough votes in the convention to control its action, contesting delegations will appear from a number of States, by seating some of which the necessary additional strength may be secured.

Already the country is aroused to the fourth of the great functional evils, campaign contributions from great corporations and "malefactors of great wealth." No extended discussion of this subject is possible here. This abuse is, perhaps, not the sole product of the convention system, but is to be shared with the present method of conducting campaigns, marked by lavish expenditure of money, contributed by the trusts. The American electorate is fully aware that, from the selection of the delegates at the caucus to the election, the great industrial enterprises have taken a prominent part-- too prominent, in fact, to afford the public any security that it has been playing any part at all. The hypocritical pretense that such contributions are made in the public interest excites contempt. Such statements may well be treated with cynical indifference by a public which is not accustomed to seeing

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<sup>1</sup> Cf. the outrageous action of the committee on credentials in the "Taft convention" in 1912, especially in unseating the two California delegates.

trust magnates release a dollar until it is reasonably that it will return with others of its kind adhering thickly to it. Trusts and corporations can have no legitimate reason for being in politics or furnishing campaign money; there is no politics of business.<sup>1</sup> The country is demanding that such un-called-for generosity shall cease.

These are the conditions which a careful investigation has disclosed. The inherent weaknesses of the convention have proved the cause of its breakdown; and upon it have grown other serious, functional defects. Truly representative and responsive in theory, its dismal failure may be attributed mainly to the fact that it is non-representative in practise. On the ruins of the theory there has been reared a machine, which, pretending to exist for the interests of the electorate, basely diverts its authority to its own venal machinations and sordid plottings. The democratic element has disappeared; the common citizen stands as a pygmy before it. The party is powerless in its grasp. Instead of being the instrument whereby party spirit is aroused, the convention but strengthens the machine; it affords an opportunity for the machine to measure its

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<sup>1</sup> See article, "Corporations in Politics," in Beard's Readings in American Government and Politics, p.572, where Havemeyer, the "sugar king," defends corporation contributions to campaign expenses in a naive manner, in the course of a Congressional investigation.



strength; to weigh the popularity of its candidates; "to advertise and 'push good material;' to 'arouse enthusiasm among its workers;' and to bind the iniquitous brotherhood' of political schemers more closely together."<sup>1</sup>

From a rational deliberative assembly, capable of framing vital issues, it has become a body where ambiguous, meaningless platforms are written. From a place, fondly contemplated by its founders, where men of national vision and patriotism would be named, it has degenerated too often into a market place, where he who would possess must bid high in money and promise of office. It has become a place where delegates, with the instructions of their constituents before their eyes, have deliberately sold out for postmasterships.

The national convention may continue to exist. The machine is powerful in the defense of its own cherished institution, but as an instrumentality of democracy it has failed most dismally. Call our present government, manned by nominees of the convention, "government by the caucus and convention. It is not representative government. It is not government by the people."<sup>2</sup>

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<sup>1</sup> Meyer, op. cit. p.64.

<sup>2</sup> La Follette, Primary Elections. Address delivered before Michigan University, Ann Arbor, March 12, 1898. Cited in Jones, Readings on Parties and Elections, p.63.

already been noted.) But it is only within the past eight years that agitation can be said to have reached the point of determination to bring about reform or change. <sup>1</sup> Spasmodic revolt has given way to uncompromising hostility.

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<sup>1</sup> Meyer's book referred to, written in 1902, fails even to prophesy the extension of direct primaries to the national field, even for delegates to national conventions.

PART FIVE

The Remedy A National Primary  
For The Presidency

In 1824, when it was urged that the convention system be adopted for presidential nominations, those who advocated it proposed nothing new; their remedy for the oligarchical usurpations of the Congressional Caucus was merely an extension of the existing state nominating machinery. So, today, those who urge a change of system do not propose any Utopian plan involving destructive or revolutionary effects. They advocate the extension of the principle of the nominating system existing in two-thirds of our commonwealths to the field of national politics.

Aside from the almost unworkable nomination by petition, and after the indirect, unresponsive delegate convention system has been rejected, there remains but the direct primary method of nomination. It is not possible within the scope of this paper to enter into an elaborate discussion of the direct primary in its history, theory, workings or present status in the commonwealths; nor is it necessary at this late hour to undertake extensive arguments to prove the advantages from the direct primary. It has become a settled maxim of commonwealth government that there is no adequate control over public officers unless their nomination proceeds from direct primaries. The method is finding general favor, and "there can be little doubt that the dir-

ect primary system will continue to progress, supplanting the convention, until ultimately it covers the whole group of states. The direct primary promises popular control of the nominating machinery and the over-throw and expulsion of the party boss. It promises to drive out oligarchy, and to introduce democracy into the party system. . Monstrous abuses have arisen under the convention system and whether or not the direct primary can do all that its advocates promise, there can be little question that the people of the United States are disposed to give it a fair trial and will undertake the experiment without much further delay."<sup>1</sup>

As has been shown, the direct primary movement in the states has progressed until twenty-nine of the forty-eight commonwealths, nearly two-thirds, are now governed by officers nominated by the people directly; a return to the old plan is unthought of.

The most notable characteristic of primary election legislation during the past two years is the rapid extension of the application of the direct primary to national party machinery and nominations, through state, not national, action. For years the steady advance of the direct primary movement confined itself entirely to state party organization and nominations for officers within a single state. The selection of state party representatives in national party councils was passed over in silence, or expressly exempted from the direct primary or legally to be exercised indirectly through delegate

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<sup>1</sup> Merriam, op. cit., p.163-4.

conventions. The only influence exerted by the direct primary on national party operations was indirect and roundabout. Hence the application of the direct primary to the choice of national committeemen, delegates to national conventions, and the instruction of delegates through a presidential preference vote is a distinct innovation. It marks the loosening of the bonds of excess-control by national over party organization in the state, and constitutes a long stride toward making national party machinery and nominations subject to legal regulation and more truly representative of the will of the rank and file of the party.<sup>1</sup>

Today fifteen states have laws that apply the principles of direct nomination to some phase of the procedure employed in naming a presidential nominee. It is clear then that the commonwealths are well enough pleased with the workings of the system in state affairs to extend it to the national field, so far as they can.

It is the purpose of this paper to show that the principles of the direct primary can be applied to national political activities. Little time or space will be exhausted in arguing for the direct primary, except as it shall be necessary to prove that the rules already established in connection with its workings in the commonwealths can be extended to national nominations.

Three separate methods of applying the direct primary to the national political field may be

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L. E. Aylsworth, Presidential Primary Elections--Legislation of 1910-12, Am. Pol. Sci. Rev., Vol.6, No.3, p.429.

outlined; and they should be closely examined to determine which is the remedy sought for

1. The first is based on state control entirely; it contemplates merely the extension of the procedure now existing in the presidential primary states to all the other states of the Union. Under this scheme the national convention will be retained; but the election of national delegates will be placed under commonwealth supervision; the selection of national delegates at the state conventions will be abolished and there will be direct primaries to name them; they will be instructed under a preferential vote; national party committeemen will be elected at the same time. The national convention<sup>1</sup> will thus be constituted of delegates, elected under the laws with legal safeguards thrown about the elections.

The advantages of this forward step are readily discernible. Advanced ground would be taken in the matter of responsiveness; for the delegates, elected by a popular vote and bearing a mandate given by the voters directly, would undoubtedly constitute a fairly representative body. Many of the theories of the convention might then be realized. If the functional evil of disproportional representation

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<sup>1</sup> For the time, no argument will be advanced to show the uselessness of maintaining the national convention; the point is fully touched on under the second alternative presented, q.v.



were remedied, the institution would likely regain considerable of public confidence and favor. The election of national committeemen, entitled to take charge of the ensuing campaign, instead of being heldover from the previous quadrennium, would inspire the electorate with the possibility of realizing their wishes.

But here commendation must give way to adverse criticism. The nomination of a president is a matter of national concern; and the anarchy of forty-eight different kinds of state laws on an item of such importance would be unendurable. It is subversive to national unity and dignity to let the states exercise such high powers. The national convention is outside the jurisdiction of any one state; the states can have no effective control over a national institution like this when they deal with it separately. Such a plan to be employed successfully would imply some sort of satisfactory and complete legislation on the part of every state;; but at present the widest diversity exists in the legislation of the fifteen primary states, and further, judging from the ineffectual efforts some states have made to secure commonwealth direct primaries, it may be conjectured that there are "boss-ridden" states without the ability to enact legislation necessary to put this system into execution. Such

states would continue to act as formerly and their delegates would have a disastrous effect on the successful workings of the convention under the proposed plan. Again, it is pertinent to enquire whether national conventions in the future will continue to seat delegations from presidential primary states. Nothing would be easier than to disregard them and seat contesting delegations through pretended examination of election certificates. An example is to be seen in the rejection of the two California delegates, elected on a statewide ticket which carried by over 70,000 votes, at the "Taft convention" at Chicago in last June, and the acceptance of two bogus delegates in their places. The convention must not be allowed to go into an examination of the election of the delegates; for when it has this authority, it has the power to nullify the whole scheme. Clearly, then, the remedy for this and similar abuses must be to place the national convention under legal restraint; its actions must be prescribed by law. No state can legislate for the national party conclave; acting in concert they cannot. The inevitable conclusion must be that, if the national conventions are to be put under law, the only body capable of passing such a law is the federal government.

Such legislation can alone insure adequate control; prevent the thwarting of the public will; keep out the anarchy of a half hundred kinds of state laws; supply the dignity pertaining to any national institution and insure the actual benefits any such remedy promises. Evidently, state control is but a step in the right direction. The efforts being made to secure it show that the states fully realize the needs and are doing their best to apply remedial agencies; but there is a fatal lack of power in the commonwealths, and such a plan does not provide a satisfactory remedy. Federal control may be set down as the first requisite in any adequate system of reform.

2. The second plan to be outlined is control by the national government over the national nominating machinery and the retention of the convention itself as part of the new system. Just what is included under the term, "federal control," is fully detailed under the third alternative and a brief resume must suffice here: a federal law shall be passed providing for the election on a fixed day in the several states of delegates to the national party conventions; a presidential preferential vote shall be taken, which shall serve as instructions to the delegations; a national party committeeman shall be elected from each state; names

of candidates for the presidency shall be placed on the ballot by petition; provision shall be made for new parties; voting shall be by states, and primary electoral votes shall be given in proportion to voting strength; federal officeholders shall be barred from candidacy for delegateships. These general statements show the scope of the proposed federal control control of the national convention.<sup>1</sup>

That the peculiar theories of the old national convention would be retained and realized under such a scheme more satisfactorily than under any other is hardly open to doubt. It offers a very happy compromise between the convention system and the direct primary. Responsiveness and direct representation would be afforded by the latter, while the assembling of the delegates provides an opportunity for deliberation, for the formulation of a platform, for arousing party interest, for smoothing out sectional claims and presenting a solid front to the opposition. Such at least would be the theory.

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<sup>1</sup> Several bills proposing federal control, the use of a national direct primary and the retention of national convention have been proposed. See Senate Bill 5894, 62<sup>nd</sup> Cong., 2<sup>nd</sup> Ses., March 18, 1912, by Mr. Cummins: "To establish a primary election for nominations by political parties for president," etc.; and H.R. 25,498, same session, June 22, 1912: "To establish a uniform preferential primary for all candidates for the presidency, and other purposes;" and H.R. 25,884, July 22, 1912, with the same title; both introduced by Mr. Howlands.

But it has been clearly indicated that the country is demanding a change in existing national nominating institutions, and no half-way reform will serve. Whatever system is adopted must be no compromise but a straight out and out remedy. The term "convention" sounds odious in the ears of an electorate, so often robbed of power and thwarted by it. Knowing well how the convention has worked in past quadrenniums, the public will be slow to believe that, even if the delegates shall be chosen by popular vote, it will function satisfactorily in the future. Abuses will remain in the convention to taint the proposed plan. The results of such a compromise can only be conjectured, but it is evident that there would be no sure guarantee that public opinion would have its perfect way; every indication points to the fact that the weak spot in this second alternative is the convention. The old-time evils would continue to flourish almost undisturbed.

Any scheme of nomination which interposes needless checks in the way of a definite expression of the public mind should be abolished. This is the basic fault of the convention. The truth of this statement is manifested by the instances of those states which have adopted the direct primary but which have never been afflicted by the "machine" or by bosses. The reason is to be ascribed to the



determination of the electorate to make its own nominations for itself, and to refuse longer to take the chance of having its wishes thwarted. Indirect election of the president of the president has broken down; the electoral college is a farce: the voters practically elect the president directly. The electoral college is useless, and so is the national convention. The college offers little opportunity for nullifying the public choice; while the convention affords the greatest opportunities for overriding it. The convention is not only useless but vicious and fraught with danger to popular rule. The convention defenders declare it acts for the voters of the party and is democratic; ostensibly they repose sovereignty in the people. Now, plainly, either the convention is democratic, in which case, because of abuses, organic or functional, it has become unfitted for further employment; or else the convention is not democratic in principle; and therefore in either case a new system will have to be devised. If the electorate is dissatisfied with conventions and the convention system of indirect nominations, true friends of popular government can do no more than assist in securing a better plan of choosing candidates for public office. As Prof. Merriam suggests: it is unfortunate for the conven-

tion that the foes of popular government are its strongest supporters.

Is it not absurd to deny the power to the electorate to nominate directly when the power to elect, practically directly, has been conferred? How can the friends of the national convention argue against direct nominations and pretend meanwhile to be friends of the people's rule? Intelligence does not vary with the calendar; the people are as capable of naming party nominees in September as of choosing public officers in November.

Whether we will it or not, popular selection of national delegates is coming; already one-third of the states has adopted such laws. It is certain that the nation-wide extension of the plan is but a matter of a few years. But state regulation is unthinkable. Neither are the people disposed to retain the national convention. The perfect theory of the convention implies that the popular will is to be minutely carried out, but the voice of the people becomes too inaudible to be heard by the time the convention assembles.

If a scheme of direct nominations can be devised which will transact with simplicity and dispatch the business heretofore laid on the convention, there can no longer be any reason for retaining the institution. The two essentials, the, for a new sys-



tem of direct nomination must be federal control and the abolition of the convention in national politics. These form the basis for the third alternative.

3. One of the many methods suggested in the Constitutional Convention for the election of the president was a direct vote; but, says Benton, "because the opinion prevailed that the mass of the people would not be sufficiently informed, discreet and temperate to exercise with advantage so great a privilege as that of choosing the chief magistrate of a great republic," the electoral college was devised, only to break down almost before it was set up. This same theory of the people's incompetence was held in regard to nominations. But one friend of the people stood forth to insist on their ability. Thomas H. Benton, on the death of King Caucus in 1824, proposed a plan for a direct election to do away with national nominating machinery and the electoral college as well. The plan was simple: "the mode of taking the direct vote to be in districts, and the person receiving the greatest number of votes for president or vice president in any district, to count for one vote for such office respectively."<sup>1</sup> A committee of which he was chair-

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<sup>1</sup> Benton, op. cit., I: ch. 37.

man in the session of 1824-5 brought in a finished amendment, proposing that each state be divided into as many districts as the state had electoral votes; on the first Thursday and Friday in August of the presidential election year the people were to vote by districts for the president and vice president; Congress should meet on the second Monday in October to canvass these district votes; the presidential candidate with a majority was to be president, and if there was no majority, a second election was to be held in December, on the first Thursday and Friday. In case of a tie, the House should then choose one as president, and the Senate the vice president.<sup>1</sup>

Undaunted by its failure to carry in either house, Benton declared: "There should be no despair on account of the failures already suffered. No great reform is carried suddenly." In 1844, stirred by the treachery of the Democratic convention to Van Buren, he again issued a phillipic<sup>2</sup> against the convention system, blistering in its fierceness. Almost every evil of the modern convention is detailed in his description: over-representation of the non-Democratic states, trades, violation of popular

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<sup>1</sup> Benton, op. cit., I: ch. 78-9.

<sup>2</sup> Benton, op. cit., II: 591-6.

some plan must have sprung up to provide unanimity of action. A regular election in the party to select the party candidate is the only logical solution of the difficulty.

The objections to the third alternative are practical or legal. The practical will be considered first.

Logically, the first inquiry is: Who will be candidates? Each party will select the individual in whom it has the greatest confidence, just as the nation in November selects the candidate in whom it reposes the greatest trust. Bourne offers a concrete answer: "Generally, I believe the selections will be from governors of States who have made good executives. Occasionally some man may arise who solves some great problem or originates some new idea improving the general welfare."<sup>1</sup> Senators, mayors of large cities, and others who have exhibited great administrative ability and devotion to the public service will be chosen. Candidates for the nomination will be the finest citizens the nation boasts. No longer will it be necessary for a presidential aspirant to cringe in fawning servility before a convention; no longer will the popular candidate see his claims disre-

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<sup>1</sup> Bourne, op. cit., p.7.

garded for a candidate who is more "available." Availability will give way to ability. Fair, equal and clean competition, now provided within our commonwealths between candidates for all offices will be extended to the national political arena. Before the eyes of every national political character will be placed the presidential possibility and every assurance given that the competition will be fair and equal and based on past services rendered. Every nominee will be selected on merit; not to secure the votes of certain states or placate certain factions in the party. The candidate selected will be free from any entangling alliances, for no political plunderbund could or can give him his office. The benefit to the civil service will be incalculable.

Again: How will the candidate for the nomination get before the public? During the making of the record on which he will later base his claim to the presidency, the aspirant is in the public eye. Hiram Johnson, governor of California, secured his place on the 1912 Progressive ticket because he led the winning fight on the Southern Pacific "machine;" Woodrow Wilson was named for the presidency in 1912 because of his progressive administration in New Jersey, during which his acts were matters of common knowledge in every part of the nation; and he later

won the presidency on this same gubernatorial record. After he has announced himself as a candidate, the aspirant will tour the country, make speeches in many places on various occasions and maintain a press bureau, just as was done by all the numerous candidates in 1912 for the presidential nomination; in no respect will the new system differ from the old or from the practise which is obtaining in the presidential primary states at present, or would obtain under the first and second alternatives. Nor will there be any change in the manner of conducting the campaign after the nominations are made; for there will be the same party organization in nation, state, county and voting precinct; national committeemen and precinct committeemen will be retained. Undoubtedly there will be less "red fire" ignited, less political "hot air" expended, fewer extravagant and misleading statements promulgated, and more sanity and clear sightedness manifested on the part of the voting public.

While it is not in the field of this paper to propose a specific remedy for the curse of campaign contributions from corporations and "interested individuals," yet it may be well to indicate that any reform which may be made will fit into the scheme here being proposed. Publication of the list

of contributors before and not after the election is imperative. Whether large industrial companies and their promoters shall be allowed to contribute or whether the campaign expenses shall be met only from the pockets of the private citizens; whether the government shall set aside a sum for the campaign expenses of the nominees, as has been proposed, or whether the matter shall continue to go unregulated by legal restrictions: these are problems to be solved in this field. One thing is certain: reform is a crying necessity in the face of the tremendous and dangerous (i.e., to the purity of elections) expenditure of money now lavishly poured out in each presidential campaign.

Because of the fact that the states now pay the expenses of the regular November elections, where members of the House and presidential electors are selected, and where senators will be named under the seventeenth amendment, it seems advisable to ask the states to pay the cost of the presidential primary; but, since nearly three-fourths of the states now have state primaries, by combining the two the expenses will not be much heavier. It should be noted in this connection that if presidential primaries are generally adopted, as will be the case if no national primary is established, the states must bear this expense. The matter of cost can not figure

largely in the arguments against such state presidential primaries.

The practical politician may assert that there will be a loss of party spirit and a general letting down of public interest in nomination and election. He will, however, not adduce as proofs the experiences of the state primaries, either for naming candidates for the state officers or for electing and instructing delegates to the national conventions. His charges are all the more absurd when it is remembered that a half dozen schemers and professionals of his kind now represent the electorate in the primary caucus where all the party voters are supposed to be present to participate. Even if only ten per cent. of the voters should participate in the primary, he cannot deny that the number is probably a hundred times larger than those who attend his cherished caucus. His concern is suspicious. He is only too well aware that with all the citizens free to participate, as the big majority will do, his power will soon disappear. Is it not reasonable to believe that the electorate will be much more vitally interested in an election between candidates of their own choosing?

There is more in his assertion that disgruntled, rejected candidates will go over to the enemy, bearing their supporters with them. He



prophesies an end to organized party existence. When a distinction is made between the reasons for such defections his argument is exploded. They may be of two sorts: defections based on principle, or because of minor and personal considerations. In the first case is exhibited the vital principle of independent citizenship: Stay in the party of your choice as long as your political ideals and theories coincide with those it professes; when a difference comes and your conscience suffers by remaining, then leave. Such actions gave the nation the Republican party of 1856-60 and solved the slavery issue of a half century's standing. The Clays, Websters and Douglasses must ever regard the Searns, Chases and Lincolns as political heretics, traitors to established compromises, destroyers of party harmony and enemies to organization. The second class of defections may indeed occur; but they are as likely to occur in one party as another, balancing the effects. The assertion may be made that they are more likely to occur under the convention system than under the primary scheme; and the stickler for organization is as likely to find himself in the number who revolt as are any others. The classic example of this "crime" in Kansas was the knifing of Governor Stubbs in the 1912 senatorial campaign, when the "organization men," dissatisfied with the primary

results, threw their influence and votes for his opponent. Such defections have attended elections ever since the Constitution was adopted. "Bolting conventions" have been marked features of many national conclaves. Rifts in party organizations are as likely to occur after conventions as after primaries. No apparatus has ever been devised to keep voters in the party who are determined to leave; none ever will; none is desirable.

What time shall elapse between the primary and the election? No arbitrary period is set, but a month or six weeks would seem to be sufficient. The turmoil and disturbance attending a national election is not especially agreeable, and only time enough should elapse to give the country a satisfactory opportunity to compare the two or three main candidates, to digest the principles at issue and to come to a decision. No long period of time is necessary. To set the election in ten days would not be desirable, owing to the necessity of allowing time to settle primary contests which may occur and of avoiding the appearance of undue haste, yet few will assert that the country would not be competent then to dispose of it.

Admittedly the most difficult of the practical problems is the framing of the platform. How is it to be done? The difficulty in answering this

query lies not in proposing a plan which will provide the party with as good a platform as it secures under the convention, for any platform of any devising would be as good and mean as much; a satisfactory scheme must be devised to allow the issuance of a real platform, vital, sincere, aggressive and binding on those charged with its execution.

This problem has been a problem of the primary in general. A candidate for nomination presents his own platform--or more correctly stated, he issues statements of his purposes to do or not to do, if nominated; he re-issues them, if nominated, for the election campaign. The difficulty has arisen in making his platform into the party platform, especially in the larger political units. This may be difficult to do but faith with the people is not kept unless it is actually accomplished.

The state practises furnish helpful suggestions. In Wisconsin a candidates' convention is held to form a platform; it is composed of "all party candidates for state office and for the legislature, and the party's hold-over members in the state legislature." . . . "In Missouri the law provides for the formulation of a platform by the state central committee, acting with the party nominees for the state office, for Congress and for the (common-

wealth) legislature."<sup>1</sup> Kansas and North Dakota follow the same procedure, while Texas allows an initiation of platform planks by the party voters. Oregon allows the candidate to express his principles on the ballot in not to exceed twelve words.

Merriam declares that "The shaping of the platform by the candidate seems, all things considered, best fitted to survive." Meyer is more positive:

In a platform made by candidates, it may be said that it stands nearer to them, and that they are made more directly responsible for it. The candidates know public sentiment; they have studied public questions carefully and may be given credit for honest efforts to touch the pulse of the people. Having framed their own platform, they are bound to feel a personal as well as an official responsibility for it, and they are more likely to carry out its provisions faithfully than if they had been foisted upon them. . . . Candidates under a direct primary system will be strong enough to secure nomination only as they embody, represent and express in their candidacy political principles and administrative policies which command confidence and support with the members of the party. These policies and principles will be the real issue in the campaign preliminary to the primary election. And their explanation and declaration will be the constant aim and effort of every candidate in the prosecution of his personal campaign. In other words, it will not make so much difference how the candidate spells his name, as what his candidacy signifies--what it stands for and represents. The policy will take precedence of the man.<sup>2</sup>

The executive is becoming more and more the party leader in the United States. A Governor Sulzer of New York at his inauguration declares him-

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<sup>1</sup> Merriam, op. cit., p. 151.

<sup>2</sup> Meyer, op. cit., pp., 270-1.

self leader of the Empire State Democracy; a President Wilson assumes full responsibility for the party platform and breaks a precedent of a hundred year's standing to read a message to Congress commanding the right-of-way for a bill drawn in accordance with a tariff plank. We have come to lay the responsibility for the successful execution of a party platform on the executive; and too often no attempt has been made to see that the legislative department considers itself equally bound by the platform. Then, when the first two years of the president's term have passed, oftentimes in disgraceful squabbling between him and Congress, the country has taken a hand in the affair by electing representatives, running on the mere platform of "X men" or "anti-X men." Until something akin to the parliamentary system of Great Britain is established here, there can be no absolute holding of representatives to a certain specified platform, but that is no reason for doing nothing at all. It is not fair to the executive to make him bear the strain and stress alone. True it is that a scheme which will make mere puppets for the representatives is not wanted; but it is as important to avoid the other extreme of absolute individualism. To be more concrete, the political philosophy of the voters of the republic is either conservative or liberal. A wise elector-

ate does not support a liberal presidential candidate and conservative congressmen. There should be full consistency in the selections.

The platform must emanate for the pre-primary and pre-election statements of the candidates; and the previous actions and records of these aspirants will speak much louder than the words that they may utter while asking for the office. A governor who vetoed a popular measure, exhibiting a mind of eighteenth century political intelligence, will not be able to go far on professed allegiance to other public measures and issues of the day. It may be well to have the platform of the successful candidate for the presidential nomination made into a formal tabulation for the regular campaign; it may be well to have the national committee issue this formally, so as to avoid all misunderstanding and to give it a wide publicity, but every plank must meet the approval of the presidential aspirant. Congressional candidates in the pre-primary campaign must be forced to state their positions and to take an out-and-out stand on existing issues, pledging themselves to support certain public measures; equivocation and "straddling the fence" must mean rejection; in the pre-election campaign they must be made to promise to support the platform of the leader of the party; platforms and men must



tied together--for rejection or adoption.<sup>1</sup> With men running for nomination and election on their records, there will be little chance for abuses to creep in. The platform is merely a promissory note to continue in the same way.

Among the first of the legal questions involved is the size of the primary election areas. To avoid complexity, it will be well to borrow the machinery of the regular presidential election, whenever possible. Undoubtedly, the states will be satisfactory election units. It is recognized that some injustice may be done by disregarding the majorities of the defeated candidate in certain districts; but we have grown accustomed to see a candidate secure the entire electoral vote of a state, although the choice of less than half of its citizens.

One of the most vital items is the preferential vote to be taken. A system of voting that insures a majority instead of a plurality in popular elections is a matter of considerable importance; especially is this discovered in the attempts to dislodge a machine candidate or to prevent his nomination. An example of this evil will suffice to

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<sup>1</sup> In the British House of Commons, "members are mostly, perhaps, elected because they will vote for a particular ministry rather than for purely legislative reasons." Bagehot, op. cit., p. 92.

illustrate the point:

The need of providing for majority elections is evident from the briefest consideration of the recent contest for one of New Jersey's seats in the United States Senate. At the primaries, at which a Democratic candidate for senator was to be chosen, three prominent progressive Democrats announced themselves as candidates. One day before the expiration of the time in which announcement of candidacies were valid for printing on the official ballot, a reactionary Democrat who had held aloof from the contest till then, announced that he was a candidate also. Here was a situation very dangerous to the progressive cause; if the progressive vote was to be divided among three men, the reactionary was likely to get a plurality and win. Under these circumstances two of the progressives had to withdraw in order to concentrate the progressive vote of the party on one man. . . The whole difficulty would have been avoided by the use of a preferential ballot.<sup>1</sup>

The evil of disproportional representation is one to whose eradication the proposed scheme readily lends itself. By giving one primary-election vote for each 10,000 votes cast for a candidate, this abuse will be wiped out.

In order not to violate the provisions of the Constitution that no state shall furnish both presidential and vice presidential candidates, it will be necessary to establish the rule that, when the president is nominated, in case the returns indicate that the vice presidential candidate is from the same state, he shall be dropped and the holder of second place substituted, unless he also be from the same state, when recourse shall be had

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<sup>1</sup> Equity, cit., pp. 59-60.

to the list until the constitutional provision be complied with. But this is so unlikely to occur as to be a negligible consideration.

The ballot should be uniform for the whole country; it should be secret and closed; i.e., the tickets for each party participating and one column blank for independents should be placed in parallel columns. The ballot should be perforated lengthwise between the tickets, and the elector, after voting in one column alone, should destroy the unused portion of his ballot, returning the marked section, folded, to the election clerks.

The last point to be noted under the legal questions is the constitutionality of the proposed measure. Inquiries directed to recognized authorities failed to be complete as to number or conclusive in the opinions rendered. Governor Simeon Baldwin of Connecticut states:

The scheme of our college of presidential electors obviously contemplates the exercise by their members of an independent judgment. A direct primary, to control their choice, would seem to me inconsistent with this, and therefore to require a constitutional amendment. True, their choice is now virtually predetermined by a party national convention, but this is wholly outside of the constitution, which must certainly be left consistent with itself, except as modified by amendment.

William Lewis Draper, Dean of the Law School of the University of Pennsylvania, says:

I believe Congress has the power to pass the national primary law, provided the same is coupled

with a national election law affecting members of Congress, but I recognize that there is a great deal to be said with force against this proposition. It is one of those questions on which intelligent men can differ and which can only be finally decided by the Supreme Court of the United States.

Dean J.P. Hall of the University of Chicago Law

School answers that:

The difficulty with congressional legislation in regard to direct primaries, is that the federal Constitution neither provides for nor recognizes any such thing as nominations or nominating machinery for presidential candidates. . . the only control given to Congress over presidential electors and the day on which they shall give their votes. In all other respects the appointment of presidential electors is left entirely to the states, and the United States Supreme Court has even said that the presidential electors so appointed are no more officers or agents of the United States than are members of the state legislatures when electing Senators, or the people of the states when voting for congressmen. In re Green. 134 U.S., 379. . . If you will look at the present Act providing for publicity for campaign contributions (Chapter 392, Acts of 1910) you will observe, from the somewhat peculiar language used, some doubt as to the constitutional basis of the legislation. It expressly applies only where money has been spent for influencing in two or more states the result of an election at which representatives to Congress are elected. Evidently the framers hoped to make it valid under some interstate power, if it failed otherwise, and at least to include the elections of representatives, even though other officers elected at the same time were beyond federal control. When the Act was amended by chapter 33 of the Laws of 1911, by requiring candidates to file statements of their expenses, this was expressly confined to candidates for the offices of representative and senator, presidential electors and candidates for president themselves being entirely omitted in this amendment.

While these replies are not conclusive, they indicate clearly that reasonable doubt exists in the minds of those who declare the measure constitution-

al; this doubt, combined with the positive declarations of those who urge the opposite view, go far to prove that a change in the Constitution must be made to permit the enactment of the proposed measure. But, aside from the time and agitation necessary to secure the passage of a constitutional amendment legalizing the plan, this fact need cause no change in the situation; if the plan is satisfactory, it must be secured. The following resolution will clear the way:

Resolved by the Senate and House of Representatives of the United States of America assembled (two-thirds of each House concurring therein), That the following be proposed as an amendment to section one of Article II of the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the States, namely: Amend the second paragraph of said section, providing for the manner of electing the President and Vice President of the United States, to read as follows: Such President and Vice President shall be nominated by the direct vote of the qualified electors of the several States. The election shall be held in accordance with law to be enacted by the Congress of the United States.

What fate would such an amendment likely

have? The answer is not pure speculation. Twenty-nine states have state nominating primaries; fifteen states have presidential primaries; when twelve duplications are subtracted from the total of forty-four, a net total of thirty-two remains, only four below the number necessary to amend the Constitution. The outlook is hopeful: three states have presidential primary laws which do not have state primary statutes; apparently the measure is attractive even to those states which have not found necessary or desirable state primary laws. Doubtless these states would favor a national law to cover the whole field. Then, too, there are the twenty-nine direct primary states, twelve of which now nominate by direct popular vote the national delegates; and the number of direct primary states is constantly being augmented. There seems to be no reason to fear that the approval of the thirty-six will not be forthcoming when asked for by the submission of such an amendment by Congress.

A P P E N D I X A

A S u g g e s t e d M o d e l L a w



Shorn of legal verbiage and presenting merely the outline of the proposed measure, the following bill, which sums up the points already made and gives a coherent, connected whole, is offered:

#### A BILL

To establish a primary election for the nomination by the direct vote of the qualified party voters of candidates for President, Vice President and national party committeemen, to abolish national nominating conventions, and for other purposes.<sup>1</sup>

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That every nomination for President and Vice President of the United States and for national party committeemen made by any political party shall be made in a primary election to be held in the several States at the time herein provided, and no nomination made in any other manner than as provided herein shall be legal.

Section 2.- That any political organization which at the last preceding presidential election cast in the aggregate in all the States five per centum of all votes cast shall be deemed a political

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<sup>1</sup> Ample borrowings, especially of legal phraseology, are acknowledged from Senate Bill 5894 of Senator Cummins, 62 Cong., 2<sup>nd</sup> ses., March 18, 1912.

party; new organizations which shall participate, as hereafter provided, in any presidential election and shall cast five per centum of the votes cast shall also be deemed a political party.

Section 3.- Every person qualified to vote at the last preceding election for members of the lower house of the State legislature shall be qualified to vote in this primary.

Section 4.- The primary herein established shall be held in all the States, and at each polling place in all the States, on the second Tuesday after the second Monday in September of each presidential primary year.

Section 5.- In those States, where primary elections are held for State and county officers and members of the Houses of Congress, or any combination thereof, at the option of the States it shall be permissible for such primaries to be combined with the primary herein provided. Judges and officers of the State primary may be judges and officers of this primary; and, in addition to the oath that may be required by the State statutes, shall take an oath of office to perform faithfully the duties devolving on them under this law. In those States where direct primary elections are not held, the judges and officers of the primary shall be those who served at the last preceding

congressional election. Expenses incurred by the primary shall be borne by the States. When not inconsistent with the provisions of this Act, the rules of the States having primary election laws shall be used to regulate this primary; i.e., as regards polling places, method of determining party affiliations, manner of registering voters, and other minor election rules. In those States without primary elections, the following rules shall obtain . . . . (For example, see Section 5, Sen. Bill 5894)

Section 6.- The ballot to be used in all the States shall be in substantially the following form:

(Name of) PARTY	(Name of) PARTY	IND'P'T OF PARTY
<u>For President</u>	<u>For President</u>	<u>For President</u>
( ) Name ptd. in	( ) Name ptd. in	( ) Blank
( ) Name ptd. in	( ) Name ptd. in	( ) Blank
( ) Blank	( ) Blank	( ) Blank
<u>For Vice Pres.</u>	<u>For Vice Pres.</u>	<u>For Vice Pres.</u>
( ) Name ptd. in	( ) Name ptd. in	( ) Blank
( ) Name ptd. in	( ) Name ptd. in	( ) Blank
( ) Blank	( ) Blank	( ) Blank
<u>For Nt. C't'man</u>	<u>For Nt. C't'man</u>	<u>For Nt. C't'n</u>
( ) Name ptd. in	( ) Name ptd. in	( ) Blank
( ) Name ptd. in	( ) Name ptd. in	( ) Blank
( ) Blank	( ) Blank	( ) Blank

The columns for party candidates shall be as numerous as may be required; there shall be one column without name of party, designated "Independent of Party." Names of parties and individuals shall be arranged alphabetically. In each party column there shall be lines left blank so that each elector shall have the opportunity to vote for his preference as the candidate of his party by writing in the name. Each voter shall express his preference for the candidates whose names may be printed, or whose names he may write under the heading of any office, by numbering such in one-two-three preferential order, in the squares opposite their names.

The ballot shall be perforated longitudinally between the various tickets; the voter shall separate the ticket, which he voted, from the remainder of the ballot; the used portion he shall present, folded to avoid inspection, to the judges of election to be deposited in boxes provided for that purpose; similar disposition shall be made of the unused portion.

Section 7.- A National Canvassing Board, to be known as the National Board, shall be created by the President, by and with the advice and consent of the Senate, upon the nomination of the chairmen of the several national political party committees.

So far as possible, each party in order of voting strength shall be represented thereon; no party shall be represented by more than two members.

There shall be in each State a canvassing board, the personnel of which shall be the same as the customary State canvassing board. The powers and duties of said board is hereafter prescribed.

Section 8.- No candidate for President, Vice President or national committeeman shall have his name printed on the official ballot of his party unless at least 45 days prior to the date fixed for holding the primary election a nomination paper shall have been filed in his behalf with the said National Board. . (Here the law shall follow the customary rules laid down in State legislation for nomination papers, tests for party affiliations, etc. Or see Senate Bill 5894, previously cited.)

Petitions for the President and Vice President shall be signed by a minimum of one per centum of the voters of the party, as shown by the returns of the last general election, in each of at least five States and in the aggregate not less than one-fourth of one per centum of the total vote of his party as shown by the returns of the last general election. If the party, for which it is desired to nominate a President or Vice President did not participate in the last presidential primary, then a

minimum of one-half of one per centum of the qualified voters in at least ten States shall sign the nominating petitions.

Candidates for national committeemen shall present petitions signed by at least one-half per centum of the voters in his party in at least one-tenth of the counties of his State and in the aggregate not less than one-fourth of one per centum of the total party vote in the State as shown by the returns of the last general election. If the party for which it is desired to nominate a national committeeman did not participate in the last preceding presidential primary, than a minimum of one-half of one per centum of the qualified voters in at least one-tenth of the counties shall be required to sign the petitions.

Section 9.- At least thirty days before such primary election the National Board shall transmit a certified statement, showing a complete list of the names of those qualified to appear on the ballot, to the State canvassing boards, and shall send as soon thereafter as possible a sufficient number of ballots for the State.

Expenses incurred in printing and distributing the ballots and other expenses of the National Board, incurred for the primary, shall be paid by the States in proportion to federal population.



Section 10.- (It shall deal with the conduct of the judges and officers of election at the various polling places.)

Section 11.- Upon the closing of the polls, the judges and clerks of the election shall open the ballot boxes and count the votes for each candidate for nomination. A table giving the preferential vote for the candidates for each office shall be arranged as follows:<sup>1</sup>

(Blank) OFFICE.

First choice		Second choice			
		A	B	C	D
A	55,000	.....	20,000	20,000	15,000
B	40,000	1,500	.....	20,000	18,000
C	30,000	2,000	25,000	.....	3,000
D	25,000	1,000	20,000	4,000	.....
	150,000	4,500	65,000	44,000	36,500

These tables shall be sent to the State Board immediately on the completion of the count.

Section 12.- The State Board shall assemble on the second Thursday after the primary and canvass the votes for the State, making similar tabulations to those of the local election officers for the

<sup>1</sup> Equity, cit., p. 60.



whole State, secured by adding the totals for each voting precinct. If any candidate shall have received a majority of all votes cast by his party, he shall be declared to be the nominee. If no candidate has a majority, "the name of the one having the least number of first-choice votes shall be dropped, and the second-choice votes cast by the supporters of the dropped candidate shall be added to the first-choice votes of the remaining candidate for whom they were cast."<sup>1</sup> This process shall be continued until a majority is secured for some candidate. The national committeeman with a majority, and if no candidate has the majority the foregoing rule shall be applied to candidates for this office also, shall be declared to be elected without further procedure. The President and Vice President with a majority, original or created, shall be declared the party nominees from the State, the whole party vote shall be credited to them and they shall be thus certified to the National Board.

Contests shall be directed to the State Board and recounts may be ordered by them. Their action shall be final and no other contest of any kind shall be permitted. They shall communicate to the National Board complete tables of the votes

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<sup>1</sup> Wisconsin law quoted by Equity, cit., p. 60.

cast for President and Vice President, giving preferential vote and totals to be used as hereafter provided.

Section 13.- The National Board shall assemble on the first Tuesday in October, together with the Speaker of the House and the President of the Senate, and shall canvass the votes. Each candidate for President and Vice President shall be credited with one primary-electoral vote for each 10,000 votes or major fraction thereof cast in each State. If any candidate has a majority of the whole number of such primary-electoral votes cast in his party, he shall be declared the party nominee. In case no candidate has a majority, the system of rejection of candidates with the least number of first-choice votes, as provided in Section 12, shall be used. In case the returns shall show the Vice Presidential candidate with a majority of the primary-electoral votes is from the same State as the Presidential, the former shall be dropped and the holder of second place substituted, unless he also be from the same State, when recourse shall be had to the list until the Constitutional provision be complied with.

The National Canvassing Board shall immediately issue a statement, proclaiming the nominees

on all tickets for President and Vice President.

Section 14.- The National Board shall furnish the Secretary of State of each State with a certified list of the nominees as soon as proclaimed for the purpose of placing the same on the November ballot.

Section 15.- The platform of any national party shall be framed by the Presidential candidate and promulgated by the national party committee.

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A P P E N D I X C

A Q u e s t i o n a i r e



The following questionnaire was sent to the secretaries of state of the presidential primary states:

- 1.- Is the presidential preference law in your state regarded favorably?
- 2.- Have there been any attempts to repeal it?
- 3.- Or to amend it so as to destroy its practical features?
- 4.- Will your next legislature likely make any changes in the bill to allow an even better expression of the popular will? (By this I mean is it likely that a preferential one-two-three vote will be provided for, etc?)
- 5.- How did the law work in selecting delegates for the 1912 conventions?
- 6.- How did the preferential vote on president work out, if you have it?
- 7.- If your state law provides both for the election of delegates to the national conventions, and a preferential or a preference vote, do the delegates have any legal obligation to vote as the voters expressed their preference?
- 8.- Did your delegates bolt their instructions at the last national conventions?
- 9.- How do the practical politicians regard this law in your state?
- 10.- Have the primaries tended to separate state, from national, issues, allowing the voters to handle them separately?
- 11.- How large a percentage of each party's normal voting strength voted in the 1912 primary?
- 12.- Has there been any let-down in party strength or party regularity?
- 13.- All things considered, do you believe that your state has successfully solved the problem of direct popular nominations for the national party candidates?

14.-Do you think that a national law, passed by Congress for the whole country and conducted as the regular November elections are, would be a more effective manner of choosing than state action?

The answers were not satisfactory, but four replying out of fifteen. So fragmentary are the results that the questionnaire has little value; about the only fact clearly established is that the operation of the laws is generally regarded as satisfactory; if amendments are made they will be for the purpose of correcting minor deficiencies in the statutes and for improving them; in no case there will there will a repeal.

The answers received are here summed up:

- 1.- Mass. and Nebr. unqualifiedly answer "yes" while Ills. replies "By some regarded favorably; by others unfavorably."
- 2.- Mass.: "No demands to repeal it." Nebr.: "To amend only." Ills.: "No session of the state legislature since its enactment, less than a year ago."
- 3.- Nebr.: "No." Mass.: "There have been no demands to amend it, although the necessity of certain amendments is admitted."
- 4.- Nebr. and Ills. are in ignorance of what next legislature intends to do; while Mass. says: "One-two-three preference voting has never met with particularly strong support except from some of the college men. It does not seem to be generally understood."

5.- Nebr.: "Very satisfactory." Because of the peculiar wording of the law in Mass., a complex situation came about; fault is found with the law, not with its workings.

7.- Mass.: "The preferential vote is not, of course, legally binding on the delegates." Ills.: "No legal obligation." Nebr.: "Only a moral obligation."

8.- Mass.: "Although Taft carried the Republican preferential vote, one half of the delegates at the Chicago convention voted for Roosevelt. At the Democratic convention, the delegates voted solidly for Champ Clark (22 ballots)." Nebr.: "Republicans no, and you know Mr. Bryan's instructions were for Clark."

9.- Nebr.: "A difference of opinion." Ills.: "Some are for it, some against it." Mass.: "What you refer to as 'practical politicians' were opposed to the passage of the act."

10.-

Ills.: "Not in the least." Nebr.: "I think not."

Mass.: "Presidential primary is held in the spring at the same time as the caucuses for selection of delegates to state conventions."

11.-Nebr.: "About 40%." Mass.: "Republican, 170,000 out of about 210,000; Democrats, 45,000 out of a normal voting strength of 180,000."

12.-Nebr.: "Decidedly so." Ills.: "It divided the Republican party in this state and placed the Democrats in power." Mass. has a "party enrollment law

and the primary enrollment and election has not affected party regularity, the voters being enrolled and compelled to vote the ticket of their party."

13.-Nebr.: "Cannot say, since the primary is comparatively a new thing in this state and has some imperfections." Ills.: "No." Mass.: "I do not regard the Mass. law as perfect. although the general idea is right;" and he suggests a change in the law that would render impossible the recurrence of the mix-up before referred to.

14.- Nebr.: "Yes." Ills.: "I do not know." Mass: "I believe that a national law, if Congress has the constitutional power to enact such a law, (as to which there seems to be some question), would be more effective than the present system which leaves it to each state to elect in the manner it sees fit."

Louisiana answers this point alone with an unqualified "No."

The writer did not regard this material as providing grounds for generalization and so merely gives it in this undigested condition.



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